IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WP(C).No. 21620 of 2004(W)

PETITIONER:

SATHI DEVAN, PUTHEN MADAM,
ASHRAM ROAD, KALADY.

BY ADV. SRI. K.P. SREEKUMAR
SRI. HARISH R. MENON

RESPONDENTS:
----

1. **THE LABOUR COURT,**
   ERNAKULAM, COCHIN-41.

2. **V.S.SUNDARAN ,**
   VAYALILLAM, CHENGAL, KALADI.P.O.

3. **THE TAHSILDAR (RR),**
   ALWAYE.

BY ADV. SRI.JOLLY JOHN
SRI.A.V.XAVIER
GOVERNMENT PLEADER SMT. SMITHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21620/2004

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE LETTER SENT BY THE PETITIONER TO THE SECRETARY OF THE KALADY PANCHAYAT DTD. 15/02/1986.**
EXT. P2	**:**	**COPY OF THE LETTER SENT BY THE PETITIONER TO THE SECRETARY OF KALADY PANCHAYAT DTD. 23.09.1991.**
EXT. P3	**:**	**COPY OF AGREEMENT DTD. 3.5.1986.**
EXT. P4	**:**	**COPY OF THE LETTER ISSUED BY THE DEVASWOM OFFICER DTD. 26.04.1984.**
EXT. P5	**:**	**COPY OF THE JUDGMENT IN O.P. NO. 15055/1995 DTD. 3O/06/1994.**
EXT. P6	**:**	**COPY OF THE ORDER DTD. 23.04.2002 ISSUED BY THE 1ST RESPONDENT.**
EXT. P7	**:**	**COPY OF THE NOTICE DATED 11.12.2003.**
EXT. P8	**:**	**COPY OF THE RECEIPT EVIDENCING PAYMENT OF THE AMOUNT.**
EXT. P9	**:**	**COPY OF THE NOTICE DATED 19.06.2004.**

// True Copy //

P.A. to Judge.

smp

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 21620 of 2004

Dated, this the 12th day of December, 2007

J U D G M E N T

I heard learned counsel for petitioner and learned counsel appearing for 2nd respondent.

2. Petitioner is challenging Ext.P6 order whereunder labour court has awarded arrears of wages to the claimant respondent herein a second round even after remand by this Court. Petitioner was initially running an ayurvedic medical shop and converted the same to a shop selling utensils and house hold articles. Even though, 2nd respondent, a close relative of petitioner's husband, claimed employment after illegal termination petitioner denied the employment as such. Petitioner's claim was found against in ID, which was confirmed in original petition and writ appeal by this Court. Consequent upon the award in the ID, petitioner was bound to reinstate the 2nd respondent with back wages. However, on failure, 2nd respondent filed claim petition under Section 33(C)(2) of the ID Act claiming arrears of wages, bonus, leave salary etc., which was allowed in part. Petitioner challenged the award in the claim petition passed by the Labour Court before this Court and this Court vide Ext.P5 judgment, granted one more opportunity to the

petitioner to prove closure of business unit in 1986 and further to establish petitioner's denial of full time employment by 2nd respondent.

3. It is seen from Ext.P6 that even after this Court granted an opportunity, petitioner did not adduce any evidence to establish closure of the unit in 1986 or to prove that the claimant was full time employed elsewhere. In spite of this, the Labour Court reconsidered the matter and found that the part time employment of the 2nd respondent as a Poojari in a temple does not stand in the way of his work with the petitioner. So far as petitioner's claim for closure of the shop in 1986 is concerned, the evidence produced by petitioner was inadequate and inconsistent. Moreover, even though challenge against the ID ended up in the judgment of this Court in W.A.No.62/87 dated 16/12/1988, petitioner has not chosen to submit in this Court that the shop was closed in 1986 i.e. two years before disposal of the writ appeal. In the circumstances, there is no bona fides in the case of petitioner. Therefore, all stay orders granted will stand vacated.

This writ petition is devoid of any merit and is dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg